

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 279 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

AHMEDABAD NEW COTTON MILLS. CO.LTD.

Appearance:

MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 06/04/99

ORAL JUDGEMENT

#. Heard learned counsel for the revenue. No one appears for the assessee in spite of service.

#. At the instance of CIT following questions of law arising out of order of Tribunal dated 30.8.83 in Income

Tax Application No. 594 of 1982 relating to assessment year 1979-80 have been referred to this court for its opinion:

"1. Whether, on the facts and in the circumstances of the case, the reimbursement of medical expenses to Managing Directors could not be considered as disallowance for the purpose of computation u/s. 40(c) of the I.T. Act, 1961?"

2. Whether the appellate tribunal has been right in law in holding that for the purposes of sec. 40(c) the payment of premium for personal accident insurance of the Managing Director could not be treated as disallowance while computing the same u/s. 40(c) of the I.T. Act, 1961?

3. Whether, on the facts and in the circumstances, of the case, the appellate tribunal has been right in law in holding that the assessee is entitled to extra shift-allowance on exhaust fans costing Rs. 58339/- fitted in factory premises?

4. Whether on the facts and in the circumstances of the case, the expenditure of Rs. 38948/- incurred by the assessee for the issue of bonus incurred by the assessee for the allowance as revenue expenditure?

#. According to the learned counsel for the revenue, as far as question No. 1 is concerned, this Court in *Gujarat Steel Tubes v. CIT* 210 ITR 358 and *CIT v. Synpol Products (P) Ltd.* 217 ITR 154 has taken the view that the reimbursement of medical expenses to Managing Directors are to be considered as remuneration for the purpose of computing disallowance under Section 40(c) of the Income Tax Act, 1961. Following the aforesaid decision, Question No. 1 is answered in negative that is to say in favour of the revenue and against the assessee.

#. Regarding question 2 it has been pointed out that it has been held by this court in *Ambica Mills Ltd. v. CIT* 231 ITR 583 that the payment of premium for personal accident insurance of the Managing Director has to be considered as part of remuneration for computing disallowance under Section 40(c) of the Income Tax Act, 1961. Following the aforesaid decision, this question is also answered in negative that is to say in favour of revenue and against the assessee.

#. Question 3 relates to extra shift allowance on

exhaust fans. The Tribunal has followed its decision in Saraspur Mills Case which was subject matter of ITR 70 of 1984. The aforesaid reference has been decided on 5.2.197 in favour of revenue and against the assessee by holding that extra shift allowance is not allowable on exhaust fans. Following the aforesaid decision, question 3 referred to above is answered in negative that is to say in favour of the revenue and against the assessee.

#. About question 4 it has been pointed out that the apex court in Brooke Bond India Ltd. v. CIT 225 IT 798 has held that expenditure incurred by company for the purpose of issue of bonus shares are in the nature of capital expenditure and not allowable expenditure. Thus question 4 also merits to be answered in negative against the assessee in favour of the revenue.

#. Accordingly all the questions referred to above are answered in the negative that is to say in favour of the revenue and against the assessee.

Reference accordingly stands disposed of with no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)